

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Post-Award Medical Award of the ALJ.

ISSUES

Is claimant entitled to additional medical treatment for the injuries suffered on February 10, 1998? As noted above, the issues dealing with claimant's entitlement to attorney fees and expenses were not determined by the ALJ and, therefore, are not before the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Post-Award Medical Award of the ALJ should be affirmed.

Claimant suffered accidental injury on February 10, 1998, when he injured his right shoulder and neck while lifting an automobile transmission with a coworker. The matter proceeded through litigation, with the ALJ issuing his original Award on March 27, 2003. The matter was appealed to the Board. The Board modified the ALJ's upper extremity award of 10 percent at the level of the shoulder, granting claimant a 13 percent impairment to the body as a whole for the injuries suffered to his shoulder and neck.

Claimant was under the care and treatment of several treating physicians, undergoing three different surgeries to the shoulder. Ultimately, claimant came under the care of Erik Severud, M.D., a board certified orthopedic surgeon, who performed the third surgery on claimant's shoulder, which was an arthroscopic surgery performed on July 23, 2001. The shoulder arthroscopy was for the purpose of repairing a small rotator cuff tear, subacromial decompression and debridement of scar material. Claimant was last examined by Dr. Severud on March 14, 2002. Dr. Severud found claimant to be at maximum medical improvement, returning claimant to work with restrictions.

Claimant continued working for respondent for a period of time, ultimately getting into a disagreement with his boss and terminating his employment. He then worked at several other facilities, performing similar mechanical duties. His last employment was with Reno County, where he was a service mechanic on large equipment. Claimant testified that his shoulder problems were continuous, but that the additional activities with the subsequent employers did not cause any additional injuries. He further testified that the condition did not worsen. It was simply continuous since the surgeries on his shoulder.

Claimant requests a treating physician to provide pain management. Dr. Severud recommended either a pain management or physical medicine specialist, but declined the opportunity to work as claimant's treating physician, as he is not a specialist in pain management.

Claimant testified that he had suffered a subsequent injury to his low back while working for Hambelton Legreca as a parts manager. As a part of his treatment for that low back injury, he was prescribed a TENS unit by Philip R. Mills, M.D., who was his treating physician in that litigation. Claimant testified that the TENS unit was effective in treating his low back. He further testified that he used the TENS unit on his shoulder, experiencing significant benefit from its use. However, he was out of the pads and supplies needed to utilize the TENS unit. Claimant proposed to Dr. Severud that he be allowed to use the TENS unit on his shoulder, and Dr. Severud, without again examining claimant, provided a prescription on November 11, 2003, for TENS unit pads, skin cleaner and batteries for the supplied model.

Claimant is requesting that he be provided medical care with a pain management specialist or physical medicine specialist, including the supplies needed to allow him to use the already-owned TENS unit on his shoulder.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

When a primary injury under the Workers Compensation Act arises out of and in the course of employment, every natural consequence that flows from the injury is compensable if it is a direct and natural result of the primary injury.²

Every natural consequence of a compensable injury is also compensable, even a new and distinct injury, if it is the direct and natural result of the original compensable injury.³ However, a subsequent reinjury of a compensable injury is not compensable if it results from a new and separate accident.⁴

While respondent alleges claimant's need for treatment is the result of claimant's intervening work duties, respondent provides no evidence to counter claimant's testimony. The Board finds claimant has proven that his need for additional medical treatment is a direct and natural consequence of the original February 10, 1998 injury. Respondent is ordered to designate three qualified physicians from which claimant may designate the actual authorized treating physician.

¹ K.S.A. 1997 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g).

² *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

³ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

⁴ *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P. 2d 697 (1973).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Post-Award Medical Award of Administrative Law Judge Bruce E. Moore dated July 29, 2004, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Stephen J. Jones, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director